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September 9, 2002

BY HAND AND ELECTRONIC MAIL

Paul B. Vasington, Chairman
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 02-40, Default Service Investigation

Dear Chairman Vasington:

The Competitive Power Coalition of New England, Inc. ("CPC") is pleased to submit this letter in response to the comments received by the Department of Telecommunications and Energy ("DTE" or "Department") regarding the future of default service in the Commonwealth. The CPC is a professional trade organization that comprises electric generators, power marketers, waste-to-energy facilities and co-generators. CPC's members represent the overwhelming majority of both the installed and proposed generating capacity in Massachusetts and throughout New England. CPC is universally acknowledged as the preeminent representative of the competitive power supply industry throughout New England.

In reviewing the various default service proposals filed with the Department, CPC was encouraged that most commenters expressed support for policies that would move Massachusetts closer to the goal of achieving robust competition for all retail customers, and CPC remains committed to working with the Department and other interested parties to reach that goal. However, as addressed further below, CPC submits that the means proposed by Massachusetts Electric ("Mass. Electric") and the Division of Energy Resources ("DOER") will frustrate those efforts. Instead, these proposals will result in higher default service prices with no corresponding retail customer benefit. Simply put, only the distribution companies, not their customers, will benefit under the DOER and Mass. Electric proposals.

1. Mass. Electric's Default Service Proposal Would Change the Status Quo for the Worse.

In its initial comments to the Department, Mass. Electric revises its default service proposal by adding a "wholesale auction" option. While the addition of a wholesale component improves Mass. Electric's prior proposal, the "wholesale auction" as set forth by Mass. Electric is deficient. Specifically, Mass. Electric has structured the wholesale auction in such a way that the only change it will make to the current procurement of default service will be to shift the costs and risks associated with certain retail services from the distribution companies to the wholesale suppliers. This shift will provide no benefit to consumers and instead, will raise the price of default service.

On the whole, very little in Mass Electric's proposal will alter the status quo. Wholesale generators will continue to provide wholesale generation, while distribution companies will continue to provide all retail services. There will be no transfer of customer accounts to the wholesale supplier and the wholesale supplier will continue to have no direct relationship with retail customers.

To the extent that Mass. Electric seeks to alter the status quo, it does so only to the detriment of other market participants and customers. For example, under the Mass. Electric proposal, wholesale suppliers would assume the bad debt risk of retail customers. As described by Mass. Electric:

the wholesale supplier would assume the bad debt risk of retail customers and, accordingly, would receive only the portion of the payments from retail customers associated with the wholesaler's winning bid that was actually paid to Mass. Electric by the customers in the wholesaler's auction block.

Mass. Electric Comments at 13.

Requiring wholesale suppliers to take on the bad debt risk of retail customers will ultimately increase the price of default service for several reasons. First, wholesale suppliers would take on all the risk associated with bad debts, but would have no means to reduce that risk. The wholesale supplier would have no control over collections, nor would it have any remedy for non-payment. Instead, the wholesale supplier would have to rely on the distribution companies to pursue collections, while at the same time, the distribution companies' incentive to do so would be reduced.

Second, shifting the bad debt risk to the wholesale suppliers will create an unnecessary new layer of risk. In assessing their bad debt risk, wholesale suppliers would not only have to evaluate the likelihood that certain customers will not pay their bills, but also the likelihood that

the distribution companies will not pursue certain collections. Under the current system, the distribution companies need not calculate for such a risk because they control the outcome. The creation of a new layer of risk will be reflected in higher wholesale bids and ultimately, higher prices to default service customers.

Further, while Mass. Electric's bad debt proposal will result in consumers paying higher prices for default service, the distribution companies will enjoy a cost-savings. As Mass. Electric itself acknowledges, the transfer of bad debt responsibility from the distribution company to the wholesale supplier would "produce a reduction in bad debts for Mass. Electric" but at the same time, Mass. Electric does not "believe that the . . . bad debt savings associated with this migration . . . warrants an adjustment under [its] rate plan settlement." Mass. Electric Comments at 25-26.

In addition, creating a quasi-contractual relationship between a wholesale supplier and a specific subgroup of Mass. Electric's default service customers will have other negative impacts on default service customers. By dividing the default service customers randomly, without regard to geography, will needlessly increase the congestion cost risk for all customers, and may be at odds with the FERC's recent proposal for enforcement of load serving entities' reliability planning requirements.¹ Separating a customer base with some regard to zonal boundaries and, minimally, distribution feeders would allow for better mitigation of those risks. During the pendency of this proceeding, it is important that the local distribution companies continue to maintain this aspect of LSE responsibility.²

Because of the negative impacts discussed above, and the lack of any benefits to customers through improved retail competition, CPC encourages the Department to reject the Mass. Electric proposal.

¹ In its Standard Market Design Notice of Proposed Rulemaking, the FERC proposes to require Load Serving Entities ("LSEs") to demonstrate to the ISO that it has rights to existing generation or generation that will be built (in combination with adequate transmission planning), and sufficient supply planned sufficiently in advance of future demand to avoid scarcity and compromised reliability. The FERC proposes to enforce this LSE responsibility through a combination of financial penalties or, in severe shortages, assigning involuntary load shedding impact first to deficient LSE's. It appears that the FERC is concerned with reliance on the existing Installed Capacity market designs which do not send strong signals to LSE's until scarcity actually arrives. Given the multi-year horizon of the NOPR resource adequacy proposal, only the distribution company (or other LSE) would be able to assure compliance. Under any of the proposals, the wholesale suppliers would not be under contract to supply until well into the planning horizon contemplated by FERC.

² If in order for the distribution companies to demonstrate compliance, it was necessary for them to procure sufficient capacity to satisfy their load's share of the FERC's proposed resource adequacy requirement, a mechanism would be needed to assign the underlying obligations under those purchases to the last resort suppliers under any of the proposed arrangements.

2. DOER's Proposal will Make the Current System of Default Service More Expensive without Encouraging Retail Competition.

DOER presents a proposal similar to that proposed by Mass. Electric. Like the Mass. Electric proposal, the DOER plan would increase costs without any associated consumer benefit. While DOER asserts that its modification "should reduce customer confusion over the actual role played by different entities in the restructured market," [DOER Comments at 36] CPC contends that by creating a fictional "Power Supply Representative," the DOER proposal will accomplish just the opposite. Under the DOER proposal, distribution companies will continue to be the retail supplier, procuring generation from wholesale suppliers who have no direct relationship with retail customers. As the DOER itself states: "the proposed modifications do not result in any formal change in a customer's supplier of generation service." DOER Comment at 36-37. Giving entities labels that denote certain responsibilities and services while those entities are in fact not supplying those services creates more confusion, not less.

In addition to confusing consumers, the DOER proposal fails to bring the Commonwealth any closer than it is today to making the benefits of retail competition a reality for small business and residential customers. Instead of suggesting modifications to the current system of default service that will promote retail competition, the DOER proposal is merely the current system called by another name. Under the DOER proposal, wholesale suppliers will continue to provide wholesale power much as they do today and default service customers will continue to receive their retail service from distribution companies as they do today. The DOER proposal would move default service away from the purely transitional, "last resort" service it was intended to be, and toward becoming a long-term "safe haven" from which consumers might never venture.

To the extent that the DOER proposal seeks to change the status quo, the modifications will do nothing to encourage retail competition and instead, will impose unnecessary burdens with no corresponding consumer benefits. CPC is particularly concerned with two elements of the DOER's proposal: (1) the requirement that wholesale suppliers become licensed retail suppliers; and (2) the requirement that wholesale suppliers operate toll-free telephone facilities.

a. Licensed Retail Suppliers

DOER's proposal to require wholesale suppliers to be licensed as "suppliers" pursuant to G.L. c. 164, § 1F is contrary to existing law and will unnecessarily increase the Department's oversight role. The Restructuring Act defines "supplier" as a "supplier of generation services to retail customers." G.L. c. 164, § 1. This definition is consistent with the regulatory structure in which wholesale suppliers operate. For example, to attain "Exempt Wholesale Generator" status under § 32(a)(1) of the Public Utility Holding Company Act, an entity must show that it is engaged "exclusively" in the generation and sale of electricity "at wholesale." This is a

jurisdictional line that cannot be blurred, and the Department should decline the DOER's invitation to attempt to regulate FERC-certificated wholesalers and wholesale transactions.

Further, merely sticking a retail supplier label on a wholesale suppliers will not change the reality that under DOER proposal, wholesale suppliers will not be providing retail service. Rather, the retail customers will continue to receive those services from their distribution company. This licensing requirement is not warranted, given the lack of a contractual relationship between consumers and wholesale suppliers. The DOER proposal would create a new class of regulated entities, with concomitant costs to the wholesale suppliers, in the form of compliance costs, and to the Department, in the form of oversight costs. Finally, DOER identifies no benefits to consumers from this new regulatory licensing requirement that would offset the costs and burdens it would impose.

b. Call Center

DOER asserts that the above licensing requirements are necessary to "ensure proper operating practices regarding the handling of each provider's call center." DOER Comments at 36 n.31. However, the suggestion that wholesale suppliers should operate call centers in itself is problematic. As described by DOER, the wholesale suppliers' call centers will duplicate the customer service already provided by the distribution companies. The utilities would continue to operate their call centers and would have to be prepared to respond to calls of any nature, including calls regarding default service, which would remain the utility's legal responsibility. Moreover, DOER does not explain how wholesale suppliers, who have no direct relationship with the retail customer, will be able to adequately respond to customer needs. As with the Mass. Electric proposal, imposing obligations without corresponding control over the extent or execution of those obligations will only result in customer frustration and confusion. Finally, while DOER describes these costs as non-material, it provides no evidence to support that assertion. Clearly, requiring each wholesale supplier to operate a call center will increase the number of call centers which in turn, will increase costs.

In sum, for the above reasons, CPC urges the Department to reject the DOER and Mass. Electric proposals. These proposals would move Massachusetts backward, toward vertically-integrated utility service, rather than forward, toward a robust competitive retail market.

3. The Department can implement certain measures now to improve default service.

While CPC does not support the Mass. Electric and DOER proposals, we believe the Department can and should take immediate action to improve default service. CPC recommends that the Department consider the following three measures, all of which are clearly within the Department's authority to act under the existing statutory scheme:

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1. Move administrative and other easily-identifiable default service costs from delivery rates to default service retail rates;
2. Begin an unbundling proceeding to identify the costs of all other retail-related services that are currently included in delivery rates and should be moved to the retail default service rate; and
3. Consider in more depth proposals, such as PG&E's ballot plan, for moving customers to competitive retailers acting as alternate default service providers.

These measures would be far more effective than the Mass. Electric and DOER plans in creating a market structure that would support robust retail competition once standard offer expires in early 2005.

Thank you for the opportunity to participate in this important proceeding.

Sincerely,

Neal B. Costello, General Counsel
Competitive Power Coalition
New England, Inc.